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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,006	03/23/2004	Robert C. Berfield	1-771	2819

7590

02/15/2006

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EXAMINER

WUJCIAK, ALFRED J

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/807,006	Applicant(s) BERFIELD, ROBERT C.	
	Examiner Alfred Joseph Wujciak III	Art Unit 3632	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 16-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-2,5-6,8-9,16-17,19-20,22-23 is/are rejected.  
7) ☒ Claim(s) 3,4,7,18 and 21 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 11 February 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/23/04.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is the final Office Action for the serial number 10/807,006, HOSE HOLDER, filed on 3/23/04.

#### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9, drawn to combination of hose and holder, classified in class 248, subclass 80.
- II. Claims 10-14, drawn to subcombination, classified in class 248, subclass 309.1.
- III. Claim 15, drawn to method, classified in class 264, subclass 508.

Applicant's election of group 1 in the reply filed on 4/22/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 5-6, 8, 16-17, 19-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent # 2,313,423 to Dodd and in further view of US Patent # 6,502,276 to Iversen.

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Dodd teaches the combination of a corrugated hose and a holder (figure 4) for the hose. The holder comprises two spaced apart support members (19 and 22). The corrugated hose having valleys and an elastically bowed portion and side sections located to either side of the bowed portion. Each rib includes a lip (138).

Dodd teaches the two spaced apart support members but fails to teach each members including at least one rib facing the rib on the other member and rib including lip. Iversen teaches the holder (100) comprising two spaced apart support members (126 and 128) having at least one rib (146,148) facing the rib on the other member and rib having lip (138). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified Dodd's members with at least one rib as taught by Iverson to provide additional support for retaining the hose within the holder.

Claims 9 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dodd, in view of Iversen and in further view of US Patent # 3,872,538 to Crouser.

Dodd teaches the members but fails to teach the members comprising one-piece integral molded plastic body. Crouser teaches the members comprising one-piece integral molded plastic body (col. 1, line 67 – col. 2, line 1). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified Dodd's members with one-piece integral molded plastic body as taught by Crouser to reduce cost in manufacturing process.

*Allowable Subject Matter*

Claims 3-4 and 7, 18 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In regard to claims 3-4, the prior art fails to teach wherein the members are mounted on a wall. In regard to claims 7 and 21, the prior art fails to teach the support members are mounted on the wall. In regards to claim 18, the prior art fails to teach wherein at least one rib on each member includes a second lip.

#### ***Response to Arguments***

Applicant's arguments filed 9/21/05 have been fully considered but they are not persuasive.

The applicant argues that Dodd does not teach or suggest the tube is corrugated. The examiner disagrees with the applicant because the tube needs to be corrugated in order to bend or weave through the brackets on the holder. Figure 2 in Dodd's invention shows plurality of lines in the hose, which allow the hose to be flexible with folding or bending. If Dodd's hose were not corrugated, the hose would not be able to bend and sit in the bracket of the holder. The definition for "corrugate" in Merriam Webster's Collegiate Dictionary states: to form or shape into wrinkles or folds or into alternating ridges and grooves. The hose in Dodd's invention fits the description of "corrugate" by being wrinkles or fold or alternating ridges and grooves.

On page 8 of applicant's argument stating that "there is no teaching or suggestion in the reference that these portions hold the portions of the tube against the outer clamp member 22.

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Dodd uses flat brackets to clamp single tube sections.” Claims 1-23 did not claim the portions of the tube against the outer clamp members.

With respect to applicant’s argument stating that “Iversen does not disclose elastically bowing portion of a corrugated hose and using the bowed portion to seat side sections in ribs so that the ribs hold the hose in place.” The examiner disagrees with the applicant because Iversen teaches corrugated hose that is has the ability of being in a bowed portion due to flexibility in the hose and that the holder (100) has ribs for retaining the corrugated hose in position. If the hose were not corrugated, it would slide off the holder and that the ribs would not have the potential of retaining non-corrugated hose. In this office action, the examiner used Iversen’s reference as a secondary reference to combine with Dodd to teach support members with at least one rib for retaining the corrugated hose in the member.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Dodd and Iversen both teach support for holding corrugated hose and that the hose is connected to a vacuum machine. The examiner is allowed to make a combination rejection based on Dodd and Iversen since they are analogous art in vacuum and hose support.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Joseph Wujciak III whose telephone number is (571) 272-6827. The examiner can normally be reached on 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6815. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alfred Joseph Wujciak III

Examiner

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A handwritten signature in black ink, appearing to read "A. J. Wujciak III", with a stylized flourish at the end.

2/7/06